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BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

MARVIN and KAY GUON,)	SHB No 94-11
Appellants.)	
v)	ORDER ON MOTION FOR
CITY OF VANCOUVER, TIDE-)	SUMMARY JUDGMENT
WATER BARGE LINES and)	
DEPARTMENT OF ECOLOGY)	
Respondents)	
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On August 15, 1994, Appellants Marvin and Kay Guon ("Guon") filed a motion for summary judgment in the above matter. On August 16, 1994, Respondents City of Vancouver ("City") and Tidewater Barge Lines ("Tidewater") filed an opposing motion for summary judgment. The Shorelines Hearings Board ("Board") has considered the briefs submitted by the parties, and based upon the record makes the following

FINDINGS OF FACT

I

On February 7, 1993, the City issued a shoreline substantial development permit to Tidewater for the over-water phase of a multi-phase shoreline development known as Tidewater Cove ("the Original Permit"). The State Department of Ecology ("Ecology") appealed the permit approval to the Board, which assigned it SHB No 93-21. Before the Board could hear the matter, the parties entered into a stipulation settling the dispute. The

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
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Board entered an agreed order of dismissal, remanding the permit to the City for revisions on
1 August 5, 1993

2 There are no genuine issues of material fact and summary judgment is appropriate
3 under WAC 461-08-010 and CR 56(c)
4

5 II

6 On November 24, 1993 the City re-approved the permit with revisions ("the Original
7 Permit As Re-issued") There was no appeal of this permit to the Board

8 III

9 In September, 1993, the Department of Fish and Wildlife ("DFW"), through its Area
10 Habitat Biologist, began reviewing an environmental assessment of the project done by
11 Tidewater In the meetings which followed over the next two months, DFW proposed and
12 Tidewater agreed to minimize impact on juvenile salmonid migration by moving the proposed
13 floating office portion of the project from the end of the jetty, at the farthest extension of the
14 Tidewater site into the Columbia River, to the end of an existing pier, much closer to shore
15 Based on this change, DFW issued a Hydraulic Project Approval ("HPA")
16
17

18 IV

19 On January 19, 1994, the City approved a further revision to the permit to incorporate
20 the changes made in response to DFW's concerns ("Second Revised Permit") Guon appealed
21 this permit approval to the Board, which appeal is the instant case
22

23 V

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26 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
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We find that the Second Revised Permit provides greater protection for the fish life in the river and shoreline than did the Original Permit As Re-issued

VI

The Original Permit As Reissued, which authorized the placement of the floating office at the end of the jetty, also required public access to the jetty and the floating structure, including three benches, parking, signage, and landscaping, in addition to those conditions which specifically referred to the floating structure itself

VII

We find that the placement of the floating office at the end of the shorter pier, by being closer to the shore and the public paths, will not reduce the public access which would have been provided on the jetty, and may well increase it. The deletion of the landscaping and other accessory aspects of the public access to the jetty is without substantial effect, given the substituted, nearer-shore, location

VIII

Any conclusion of law deemed to be a finding of fact is adopted as such

Based on these findings of fact, the Board makes the following

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and subject matter of this appeal under RCW 90 58 180

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II

1 The Board's jurisdiction in this matter is not based on our having retained jurisdiction
2 over SHB No 93-21 after entering the Order remanding it to the City. Rather, the Board's
3 jurisdiction in the present case is based on the present appeal alone. The requirement that any
4 revised permit on this site be consistent with the Board's order in SHB No 93-21 is because
5 that earlier appeal is now the law of the case for this permit process. The Board does not
6 enter orders substantively settling cases unless, in the Board's judgment, that settlement
7 conforms to applicable law. To the extent it is covered by the terms of the earlier Order, the
8 applicable law in the present case includes the Order in SHB No 93-21.
9

III

11 The proposed development is on the Columbia River, a shoreline of statewide
12 significance under RCW 90.58.030(2)(e)(v)(A).
13

IV

14 The motions for summary judgment address the only two issues before the Board in
15 this appeal: (1) whether the Second Revised Permit is consistent with the Board's Order on
16 SHB No 93-21, and (2) whether the Second Revised Permit is within the scope and intent of
17 the Original Permit As Re-issued.
18

V

19 The purpose of the parking, signage, benches, etc., requirements in the Board's Order
20 on SHB No 93-21 was to facilitate public access to the water. The purpose of the restrictions
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26 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
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on size and placement of the floating structure in that Order was, in part, to protect fish life,
including juvenile salmonids, from avoidable adverse impacts

VI

We conclude that the placement of the floating office at the end of the pier in the Second Revised Permit fully satisfies the public access purpose which underlay the Board's Order on SHB No 93-21 on those points, and is consistent with that Order on the issue of public access

VII

We conclude that the placement of the floating office in the Second Revised Permit does more to protect fish life in the river than did the conditions in the Board's Order on SHB No 93-21, and is fully consistent with that Order

VIII

We conclude that the Second Revised Permit is consistent with the Board's Order on SHB No 93-21

IX

The scope of the Board's inquiry into a permit revision is limited. We do not have jurisdiction over the substance of the original permit when it is a revision to that permit which is under appeal. Rather, our inquiry is only into whether the permit as revised is within the "scope and intent" of the original permit. WAC 173-14-064(1). Also see SHB No 216 (1976) at 6. also SHB No 91-39 (1992) at 3. The "intent" of a permit relates to the type of

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land use authorized, while the "scope" of a permit relates to the actual development that will be constructed

X

The determination of whether a permit revision is within the "scope and intent" of the original permit (in this case the Original Permit As Re-issued) is governed by WAC 173-14-064(2), which enumerates the criteria which, if met, entitle the applicant to a revised permit

- (a) No additional overwater construction ,
- (b) Ground Area coverage and height of each structure may be increased a maximum of ten percent ,
- (c) Additional separate structures may not exceed a total of two hundred fifty square feet,
- (d) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under the original permit,
- (e) Additional landscaping is consistent with conditions (if any) attached to the original permit and with the applicable master program,
- (f) The use authorized pursuant to the original permit is not changed, and
- (g) No substantial adverse environmental impact will be caused by the project revision WAC 173-14-064(2)

XI

In considering whether a revision in a permit to accomodate environmental concerns, we must consider the intent of the Legislature in adopting the Shoreline Management Act That intent is clearly expressed in the Act itself

The legislature finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state [C]oordinated planning is necessary in order to protect the public interest There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines. (emphasis added) RCW 90 58 020

When different agencies of federal, state, and local governments have different areas of responsibility for environmental review of a proposed project, the Legislature directs us to coordinate the implementation of the Shorelines Management Act with those other agencies' reviews. When that coordination requires revisions to a shoreline permit to meet the requirements of another agency with environmental jurisdiction, those changes must be considered as within the intent of the Legislature if they are not directly contrary to substantive provisions of the Act or the local master program.

In general, where a revised permit has the effect of reducing the environmental impact of a project and is otherwise consistent with the local shoreline master program and the policies of the SMA, the revision should be considered within the scope and intent of the original permit. Each of the criteria in WAC 173-14-064(2) is concerned with increasing the scope and impact of the project. In matters addressed by the Board in the past, the concern has likewise been with revisions that increase the size of a project or add new uses. See, e.g., SHB No. 84-21 and SHB No. 85-19. In this case, the proposed revision would relocate the floating structure from the end of the jetty landward to the end of an existing pier. Accompanying this change will be modifications to the deck of the pier to enhance the nearshore habitat for fish.

XII

We conclude that the Second Revised Permit meets all of the criteria of WAC 173-14-064(2), and is therefore within the scope and intent of the Original Permit As Re-Issued.

XIII

FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
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Any finding of fact deemed a conclusion of law is adopted as such

Based on the above findings of fact and conclusions of law, the Board enters the following

ORDER

The appeal by Marvin and Kay Guon of the Second Revised Permit approved by the City of Vancouver for Tidewater Barge Lines on January 19, 1994, is dismissed

The permit is affirmed


DONE this 9th day of November, 1994, in Lacey, Washington

SHORELINES HEARINGS BOARD


RICHARD C. KELLEY, PRESIDING


ROBERT V. JENSEN, CHAIRMAN


JAMES A. TUPPER, JR.


BOBBI KREBS-McMULLEN


O'DEAN WILLIAMSON


MARTIN CARTY